

**RESPONSE TO OFFICE ACTION DATED FEBRUARY 23, 2004
U.S. PATENT APPLICATION SERIAL NO. 09/711,178 TO CLARK
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REMARKS

Favorable reconsideration of this application in view of the above amendments and the following remarks is respectfully requested. By this amendment, claims 1 and 11 have been amended, and claim 8 has been canceled. Applicants submit that no new matter has been added, and notice to that effect is respectfully requested. Currently, claims 1 - 7 and 9 - 25 are pending of which claims 1, 9, 11, and 19 are independent.

The Examiner is thanked for the indication of allowability of claims 9 and 10. Formal notice of allowance is solicited.

The Examiner is also thanked for the indication of allowability of claim 8. The subject matter previously recited in claim 8 is now included in independent claim 1. Applicants submit claim 1 and claims 2 - 7, which depend therefrom, are now in condition for allowance and formal notice of such is solicited.

Claims 19 - 25 were rejected under 35 USC 101 as being directed to non-statutory subject matter. This rejection is respectfully traversed. Applicants respectfully submit that independent claim 19, and claims 20 - 25 which depend therefrom, recite statutory subject matter and that the Examiner is improperly rejecting these claims.

Independent claim 19 recites a transmission signal with a particular structure. Specifically, the signal includes M codes such that each M code has a phase dithered with respect to a reference code. Further, the phases of the M code are dithered according to a dither pattern.

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Applicants submit that claims 19 - 25 do not merely claim nonfunctional descriptive materials stored in a medium. The subject matter of the instant application, as presented in claims 19 - 25, is "functional descriptive material," which consists of data structures and computer programs, which empart functionality when employed as a component. A "data structure" on a medium provides a physical or logical relationship among data elements designed to support specific data manipulation functions. This is not a mere arrangement of data. The subject matter of the instant invention, as functional descriptive material, is not descriptive material *per se*, and hence non-statutory. When functional descriptive material is recorded on some medium, it becomes structurally and functionally interrelated to the medium and is statutory since use of technology permits the function of the descriptive material to be realized. In the instant case, the claimed transmission signal has been encoded with a data structure, which defines structural and functional interrelationships between the data structure and the signal components which permit the data structure's functionality to be realized, and therefore, the subject matter of claims 19 - 25 is statutory. MPEP 2100-11.

Therefore, Applicants submit that claims 19 - 25 recite statutory subject matter, and accordingly, withdrawal of this rejection is respectfully requested.

Claims 1 - 7 were rejected under 35 USC 103(a) as being unpatentable Milstein et al (Combination Sequences for Spread Spectrum Communications, IEEE Transactions on Communications, July 1977, pgs. 691-696). This rejection is respectfully traversed.

As pointed out above, independent claim 1 has been amended to include the allowable subject matter formerly recited in now canceled claim 8. Applicants submit that in view of the

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above amendments, the rejection is moot as to claims 1 - 7, and claims 1 - 7 are in condition for allowance. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 11 - 18 were rejected under 35 USC 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA) in view of Hasegawa, U.S. Patent No. 5,432,814. This rejection is respectfully traversed.

Independent claim 11 has been amended to reflect that the dither is repeated a predetermined number of times. This is not described or suggested in the AAPA or Hasegawa. Therefore, Applicant submits that independent claim 11 and claims 12-18, which depend therefrom, are not described or suggested by AAPA, alone or in combination with Hasegawa. Accordingly, withdrawal of this rejection is respectfully requested.

In view of the foregoing, Applicant respectfully submits that all pending claims are in condition for allowance, and formal notice of such is solicited. If the Examiner has any questions or comments, the Examiner is respectfully requested to contact the undersigned attorney at the number listed below.

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